

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

APRIL TERM, 1919.

561

No. 3254.

SARAH A. WHITTEMORE, APPELLANT,

vs.

MAUD B. CRAWFORD.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED MARCH 1, 1919.

PRINTED APRIL 4, 1919.

Court of Appeals of the District of Columbia.

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Court of Appeals of the District of Columbia.

No. 3254.

SARAH A. WHITTEMORE, Appellant,

vs.

MAUD B. CRAWFORD.

a Supreme Court of the District of Columbia.

At Law. No. 61874.

MAUD B. CRAWFORD, Plaintiff,

vs.

SARAH A. WHITTEMORE, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be It Remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

1 *Complaint.*

In the Municipal Court of the District of Columbia.

Filed November 22, 1918.

In the Supreme Court of the District of Columbia.

No. L. & T. 165,089. At Law No. 61874.

MAUD B. CRAWFORD, Plaintiff,

vs.

SARAH A. WHITTEMORE, Defendant.

DISTRICT OF COLUMBIA, *To wit:*

Your Complainant Maud B. Crawford being first duly sworn according to law, states that she is entitled to the possession of the premises No. 1920 16th Street, Northwest located in the District of Columbia, and that the same is unlawfully detained from her and held without right by the defendant Sarah A. Whittemore to whom the complainant had heretofore rented the said premises as a monthly

tenant and whose tenancy and estate has been determined by expiration of term, as provided in the agreement under which said tenancy was established (and the service of a due notice to quit). Complainant is an employee of the War Department and requires said premises as a place of residence for her father and herself. Complainant therefore prays that a Summons be issued, commanding the defendant to appear and show cause why judgment should not be given against her for the restitution of the possession of said premises, and costs of this suit.

MAUD B. CRAWFORD.

Subscribed and sworn to before me this 2nd day of October A. D. 1918.

T. F. SNYDER, [SEAL.]
Ass't Clk.

2

Certificate of Municipal Court on Appeal.

Filed November 22, 1918.

* * * * *	* *
Date.	Proceedings.
1918.	
	Plaintiff's attorney.....T. M. Baker.
	Defendant's ".....J. W. Shea.
Oct. 2nd	Sworn complaint filed.
" "	Summons and copy issued returnable Oct. 14, 10 A.M.
" "	Summons returned "summoned as within directed."
" 14th	Continued by Court to Oct. 21, 10 A. M.
" 21st	" " " " " 25, 10 " "
" 25th	" " " " Nov. 1, 10 " "
Nov. 1st	Judgment for plaintiff for possession of the within
" "	described premises, after trial, with costs.
" 7th	Notice of appeal filed.
" 9th	Appeal, undertaking on, filed.
" "	" notice of, filed. Set for Nov. 13, 11 A. M.
" 12th	Appeal, undertaking on, with J. J. O'Neil and F.
" "	Frazzano, sureties, approved.
" 14th	Appeal, record on, and papers filed with Clerk of
" "	Supreme Court, D. C. and notice sent to defend-
" "	ant's attorney.

This is to certify, that the foregoing is a true copy of the Docket Entries and of all the proceedings had before the said Court in the above cause, and that the annexed documents are all the original papers filed in said cause.

Witness the Honorable Judges of said Court this 14th day of November A. D. 1918.

BLANCHE NEFF,
Clerk.

Costs paid by Plaintiff, \$2.85.

Costs paid by Defendant, \$1.00.

3

Affidavit of Appellee under Rule XIX.

Filed December 3, 1918.

* * * * *

DISTRICT OF COLUMBIA, ss:

Maud B. Crawford, being first duly sworn, on her oath deposes and says as follows: That she is the plaintiff (appellee) herein, that she is the owner, by inheritance from her mother (now deceased), of premises known as No. 1920 16th Street, Northwest, in said District; that said defendant, Sarah A. Whittemore, unmarried, (appellant), rented said premises, under a landlord and tenant agreement, from affiant, through affiant's agent L. S. Lipscomb, for a term expiring September 30th, 1918, at a monthly rental of \$50.00, that desiring to repossess herself of said premises affiant served upon defendant due notice before the expiration of said agreement to vacate said premises because she, the affiant, desired to use and occupy same as her own home and residence, but notwithstanding said notice defendant refused to vacate said premises and continued to occupy same after the expiration of the aforesaid agreement, that thereupon affiant instituted proceedings in the Municipal Court of the District of Columbia for restitution of said premises, that at the trial of said cause in said Court defendant was represented by Captain Edward Mayer, U. S. Army, in his official capacity as attaché or member of the Housing Commission, that judgment was had in favor of affiant, that thereupon the said Captain Mayer, acting in behalf of defendant, as aforesaid, asked the Court for a stay of execution for 30 days to enable defendant to find another place of abode, that the Justice

4 presiding at said trial said he was without authority to grant said request, but affiant, through her attorney, agreed to said request and such stipulation was agreed to and ratified orally by the parties to the action, and that notwithstanding said solemn stipulation and agreement made before the Justice then presiding at said trial defendant employed other counsel and took an appeal to this Court. That defendant is a single woman and, so far as affiant is informed and believes, has no dependents. That affiant is a widow, that she is now and has been for several years last past employed as a clerk in the Federal service in this District; that her father is aged and infirm and an inmate of the John Dickson Home (a charitable institution) in said District, it is necessary that she repossess her said property and to occupy same as her home and to have her father live there with her during his declining years.

Wherefore, the premises considered, your affiant prays that appellant's appeal be dismissed.

MAUD B. CRAWFORD.

Subscribed and sworn to before me this 2nd day of December, 1918.

[SEAL.]

MAUDE A. FREEMAN,
Notary Public, D. C.

THOMAS M. BAKER,
Attorney for Plaintiff (Appellee).

Affidavit of Appellant under Rule XIX.

Filed December 14, 1918.

* * * * *

DISTRICT OF COLUMBIA, ss:

Sarah A. Whittemore, being first duly sworn, says upon her oath as follows:

5 I deny the right of the plaintiff, Maud B. Crawford, appellee, to the possession of the property in question in this suit, being the parcel of real estate and premises known as 1920 16th Street, northwest, in the city of Washington, District of Columbia, and the grounds of my defense in this suit are as hereinafter set forth.

I entered into possession and became and was tenant of said premises under and pursuant to a certain agreement by and between L. P. Lipscomb and myself for a term of one year expiring on September 30, 1918, and in which I agreed to pay rent for said premises in monthly instalments of \$50. each. I never had any agreement with the plaintiff, Maud B. Crawford concerning said premises or said tenancy or any other matter whatsoever.

It is true that a written notice addressed to me, dated August 27, 1918, and signed "Maud B. Crawford", wherein I was notified to remove from and vacate said premises on or before September 30, 1918, was received by me, but I was advised and believe and still believe that under the circumstances herein set forth I was under no duty to comply with her request or notice because I did not hold said premises as her tenant, and it was my duty to recognize only the said Lipscomb as my landlord and lessor. Thereafter, on Sept. 12, 1918, I paid to the said Lipscomb the sum of \$50. which he then accepted and receipted for as rent of said premises for the month ending September 30, 1918.

It is true that said notice to vacate said premises stated as the reason thereof, "I desire to repossess myself of said premises and to occupy the same as a place of residence for myself and
6 father.", but I deny the truth of said statement, and I also deny that said premises are or were necessarily required by the said Maud B. Crawford for occupation either by herself or her father, who has been for two years or more last past an inmate of the charitable institution mentioned in plaintiff's affidavit, but on the contrary I aver the fact to be that the said Maud B. Crawford de-

sired possession of said premises during and even since the month of September, 1918, for the purpose of getting a larger rent than that being paid by me. Shortly after the receipt of the notice to quit served upon me by plaintiff numerous persons called at my home for the purpose of inspecting the house, stating that they had called at the suggestion of the owner, Mrs. Crawford, who offered them the house for rent at \$100. per month; and on November 5, 1918, four days after the judgment of the Municipal Court from which I appealed in this case was rendered the said Maud B. Crawford caused to be inserted and published in the Evening Star, a newspaper printed, published and having a large circulation in the District of Columbia, an advertisement as follows:

“Unfurnished.

Immediate Possession. 8 Rooms A. M. I., servants' rooms; basement, near 16th and T N. W.; \$100 month. Address Box H Star Office.”

Immediately and within a few days after said date four or more persons called at said premises and stated that they had responded to said advertisement, and were referred by the said Maud B. Crawford to the occupants of said premises for an opportunity to inspect the house. They also stated that the said Maud B. Crawford was asking \$100. per month as the rent for said premises.

7 I have been for many years and am now in the employ of the United States Government in said District and maintain myself and my aged mother, age 75 years, who is dependent upon me, with the proceeds of my own personal service as such employee, and I need said premises and the same are by me necessarily required for occupancy by myself and my mother while I am in the employ of the United States Government as aforesaid.

When this suit was brought I went to the office where I was informed that certain officers of the United States Government could be found and consulted concerning cases of rent profiteering and the protection of Government employees who were in danger of being rendered homeless by the greed of land owners who desired to increase their incomes from rents during and notwithstanding the exigencies of the war period. At the said office I was referred to Captain Mayer, referred to in the affidavit of appellee, and he undertook to defend me in the Municipal Court against the claim of plaintiff, and he and I were present at the trial in that court, and if he then, or at any other time, asked for a stay of execution for 30 days to enable me to find another place of abode, I did not hear it, and have no knowledge of it, and I never authorized him or anyone else to make any such request. The fact is that the said Captain Mayer immediately after the Justice presiding at said trial announced his decision in favor of the plaintiff turned to me and said “This is an outrage, and I advise you to employ an attorney and take an appeal”, or words to that effect.

I never entered into a stipulation or agreement with the said Maud B. Crawford concerning stay of execution or concerning my tenancy or occupation or possession of said premises. Furthermore, I am advised and believe that if the said plaintiff ever understood that I had entered into such a stipulation or agreement she should not have proceeded forthwith to advertise the premises for rent as hereinbefore stated.

I have no desire to avoid the payment of rent and am perfectly willing, able and ready to pay rent for said premises, and I am depositing the same with my counsel at the rate of \$50. per month, and if required to vacate said premises I shall find it difficult, and perhaps impossible, to find another suitable place for a home for myself and my mother, and will find myself in a position which the so-called Salisbury Resolution of Congress sought to prevent.

SARAH A. WHITTEMORE.

Subscribed and sworn to before me this 13th day of December, A. D., 1918.

[SEAL.]

WILLIAM W. MILLAN,
Notary Public, D. C.

J. WM. SHEA,
Att'y for Appellant.

Motion for Judgment.

Filed December 17, 1918.

* * * * *

Comes now the plaintiff, Appellee, by her Attorney of record herein, and moves this Honorable Court for judgment in the above entitled cause for want of sufficient affidavit under Rule XIX.

THOMAS M. BAKER,
Attorney for Plaintiff (Appellee).

9 Supreme Court of the District of Columbia.

FRIDAY, January 10th, 1919.

Session resumed pursuant to adjournment, Mr. Justice Gould presiding.

* * * * *

Come now the parties hereto by their respective Attorneys of record; whereupon this cause comes on for hearing on plaintiff's motion filed herein for judgment for want of a sufficient affidavit of defense under Law Rule 19 of this Court, and is argued; thereupon leave is granted plaintiff to amend her affidavit of merit instant, and said motion for judgment is hereby granted.

Wherefore, it is considered that the plaintiff herein do have and

recover of the defendant herein possession of the premises No. 1920 Sixteenth Street, North West, located in the District of Columbia, and recover of said defendant and John J. O'Neil and Frank Frazzano, her sureties, the costs of suit, to be taxed by the Clerk, and have execution thereof.

From the foregoing judgment the defendant by her Attorney in open Court, notes an appeal to the Court of Appeals, and the penalty of the bond on said appeal to operate as a Supersedeas is hereby fixed in the sum of Five hundred dollars (\$500.)

Further, it is ordered that execution herein be stayed until January 15, 1919, inclusive.

Memorandum.

January 13, 1919.—Supersedaes Bond approved and filed.

10

Assignment of Errors.

Filed February 19, 1919.

* * * * *

The defendant is advised and so alleges that in and by the judgment herein rendered on January 10, 1919, the Court erred, as follows:

1. In holding that the defendant's affidavit herein filed December 14, 1918, did not set forth grounds of defense which would be sufficient, if true, to defeat the plaintiff's recovery.

2. In holding that the defendant's said affidavit was insufficient under Common Law Rule XIX of this Court.

3. In holding that the plaintiff's affidavit herein filed December 3, 1918 as amended January 10, 1919, contained matter sufficient to sustain her claim in this suit.

4. In holding upon the whole record, that the plaintiff was entitled to possession of the premises in question as against the defendant.

5. In rendering said judgment.

J. WM. SHEA,
L. A. BAILEY,
Attorneys for Defendant.

Copy of the foregoing served on me February 19th, 1919.

THOMAS M. BAKER,
Attorney for Plaintiff.

11

Designation of Record.

Filed February 19, 1919.

* * * * *

The Clerk will please prepare the transcript of record on the defendant's appeal herein to the Court of Appeals and include therein the following:

1. Complaint filed in Municipal Court.

2. Memo. showing judgment of Municipal Court, appeal to this Court and docketing of said appeal.
3. Plaintiff's affidavit filed December 3rd, 1918, as amended.
4. Defendant's affidavit filed December 14th, 1918.
5. Plaintiff's motion for judgment (omit notice of hearing.)
6. Judgment and order of January 10th, 1919, with entry showing appeal noted and entered in open Court.
7. Memo. showing filing of appeal bond, supersedeas.
8. Assignment of errors.
9. This order.

J. WM. SHEA,
L. A. BAILEY,
Attorneys for Defendant.

Copy of the foregoing served on me February 19th, 1919.

THOMAS M. BAKER,
Attorney for Plaintiff.

12 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 11, both inclusive, to be a true and correct transcript of the record, according to directions of counsel, herein filed, copy of which is made part of this transcript. in cause No. 61874 at Law, wherein Maud B. Crawford is Plaintiff and Sarah A. Whittemore is Defendant, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 26th day of February, 1919.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk,
By W. E. WILLIAMS,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3254. Sarah A. Whittemore, appellant, vs. Maud B. Crawford. Court of Appeals, District of Columbia. Filed Mar. 1, 1919. Henry W. Hodges, Clerk.

MAY 5 - 1919

Henry W. Rogers
Ullrich

IN THE

Court of Appeals of the District of Columbia.

SARAH A. WHITTEMORE, *Appellant*,

vs.

MAUD B. CRAWFORD.

No. 3,254.

APPELLANT'S BRIEF.

I. This is an appeal from the final judgment of the Supreme Court of the District of Columbia, in Landlord and Tenant proceedings, that the appellee, plaintiff, recover of the appellant, defendant, possession of certain premises in said District; which judgment was rendered summarily on motion of the plaintiff, based on the ground, as alleged, that the defendant's affidavit, filed under Common Law Rule XIX of that Court, was insufficient. The facts shown by that affidavit (Rec. 4-6) are as follows:

The defendant was tenant of the premises for a term of one year under an agreement with L. S. Lipscomb and never had any agreement with the plaintiff. The term expired Sept. 30, 1918. Defendant paid rent for that month to Lipscomb on Sept. 12, after notice from plaintiff to quit the premises and defendant ignored the notice. The rent

was payable in monthly instalments of \$50 each. Thereafter plaintiff, by public advertisement and otherwise, offered to rent the premises to other persons for \$100 per month. This advertisement was made within four days after the Municipal Court rendered judgment for the plaintiff in this case and two days prior to notice of appeal from that judgment (Rec. 2). Defendant is and for many years has been in the employ of the United States Government in said District and uses and necessarily requires said premises for occupancy by herself and her mother, aged 75 years, who is dependent upon her and if required to vacate said premises she will find it difficult and perhaps impossible to find another home for herself and her mother.

The question involved is whether or not upon these facts the plaintiff was entitled to possession as against the defendant, who claims the benefit of the "Salisbury Resolution" and also that the relation between the parties is not such that the plaintiff can maintain these "Landlord and Tenant" proceedings.

II. The errors assigned (Rec. 7) are, in substance, that the court erred in deciding the question involved in favor of the plaintiff; in holding defendant's affidavit insufficient and plaintiff's affidavit sufficient under said Rule XIX.

III. POINTS AND AUTHORITIES.

1. The conventional relation of Landlord and Tenant never existed between the parties to this suit and the plaintiff cannot, therefore, maintain this suit. The statute under which the plaintiff seeks to maintain the suit was intended to afford a remedy, by summary proceedings, for landlords against their tenants and "was not intended as a substitute for the action of ejectment" where that relation does not exist. "The foundation fact upon which the jurisdiction rests is that the tenant is in possession of the land in consequence and by virtue of that relation."

Willis v. Eastern Tr. &c. Co., 169 U. S., 295, 309.

2. Nor can the plaintiff deprive the defendant of her right to a trial by jury upon the issues raised by the affidavit of defense in which the defendant states, "I entered into possession and became and was tenant of said premises under and pursuant to a certain agreement by and between L. P. Lipscomb and myself" and "I never had any agreement with the plaintiff Maud B. Crawford concerning said premises or said tenancy or any other matter whatsoever." This is a meritorious defense stated in "precise and distinct terms" and it is not apparent that the defendant has failed to comply with the spirit of the Rule XIX as required in *Columbia Laundry Co. v. Ellis*, 36 App. D. C., 583. The plaintiff's statement in her amended affidavit (R. 3) that the defendant "rented said premises, under a landlord and tenant agreement, from affiant, through affiant's agent, L. S. Lipscomb," is based largely upon her conclusions of law as to the relation of agency and as to her own rights and status under and in reference to an agreement made by Lipscomb with one not having notice of such alleged agency. In amending her affidavit, after reading the affidavit of defense, she carefully refrained from the statement of any fact which would justify the attempt to force Lipscomb's tenant to attorn to the plaintiff or to acknowledge an alleged agency the existence of which, so far as the tenancy is concerned, and all privity of agreement or estate between the plaintiff and defendant are denied and put in issue by the affidavit of defense and on those and other issues the defendant is entitled to trial by jury.

It was obvious error for the court below to ignore the defendant's denial of the conventional relation which is a jurisdictional requirement.

3. The question as to the constitutionality of the Salisbury Resolution is now under consideration by this court, in another case which has been argued and submitted by able counsel, and will probably be decided before the decision

or hearing of this case. Therefore it will not be discussed in this brief. The affidavit of defense (Rec. 5, 6) claims for defendant the benefit of that Resolution and clearly shows that the plaintiff by these proceedings is seeking to accomplish what Congress, by that Resolution, intended and sought to prevent.

Respectfully submitted,

J. WM. SHEA,

LORENZO A. BAILEY,

Counsel for Appellant.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

IN THE

MAY 29 1910

Court of Appeals of the District
of Columbia

SARAH A. WHITTEMORE, *Appellant*,

vs.

MAUD B. CRAWFORD, *Appellee*.

No. 3,254.

APPELLEE'S BRIEF.

This is an appeal, in a landlord and tenant case, from a judgment against appellant for possession under Law Rule 19 of the Supreme Court of the District of Columbia.

The facts contained in appellee's affidavit (R. 3) are: That she is the owner of premises 1920 16th Street, Northwest, occupied by appellant under a landlord and tenant agreement with appellee's agent, L. S. Lipscomb, for a term expired September 30th, 1918, at a monthly rental of \$50.00. Due notice of quit was served upon appellant before expiration of said term; appellant refused to vacate; proceedings for restitution of said premises were instituted in the Municipal Court by appellee against appellant, and after trial by the said Court judgment was had in favor of appellee (R. 2). Appellee is a widow; is now, and has been for several years last past, a U. S. Government employee in this District; her

father is aged and infirm, and an inmate of the John Dickson Home (a charitable institution) in this District, and it is necessary that she repossess herself of said premises to occupy same as her home and to have her father live there with her during his declining years.

Appellant in her affidavit says (R. 4-6): She denies the right of appellee to the property in question, because of a certain agreement between L. P. Lipscomb and herself for a term of one year expiring September 30th, 1918, and that she had no agreement whatever with appellee concerning same; that she received notice, dated August 27th, 1918, signed by appellee, notifying appellant to vacate said premises on or before September 30th, but she ignored said notice because it was her duty to recognize only said Lipscomb as her landlord and lessor; that thereafter, on September 12th, 1918, she paid Lipscomb rent of said premises for the month ending September 30th, 1918. That said notice to quit contained the expression, "I desire to repossess myself of said premises and occupy the same as a place of residence for myself and father." She denies that said premises were necessary to appellee for said purpose, and says, on the contrary, that the appellee desired possession for the purpose of getting a larger rent than that being paid by appellant. That shortly after receipt of the notice of quit, numerous persons called at appellant's home for the purpose of inspecting the house, stating that they had called at the suggestion of the owner, Mrs. Crawford, who offered them the house at \$100 a month; that on November 5th, 1918, after judgment of the Municipal Court the appellee advertised said premises for rent in a newspaper; and within a few days four or more persons called at said premises and stated that they responded to said advertisement and were referred by said Maud B. Crawford, appellee, for an opportunity to inspect the house, and that she was asking \$100 a month for same; that appellant is a U. S. Government

employee, has an aged dependent mother, and necessarily requires said premises for herself and mother.

The sole question before this Court is as to the sufficiency of appellant's affidavit under said Rule 19.

Appellant claims the Supreme Court of the District of Columbia erred in deciding the question in favor of appellee. (R. 7.)

ARGUMENT.

Appellant says she recognizes only Lipscomb as her landlord and lessor, but she states (R. 4): On August 27th, 1918, she received from appellee a notice to quit, effective September 30th, 1918, containing as reason therefor, "I desire to repossess myself of said premises and occupy the same as a place of residence for myself and father." Yet, she says further (R. 4), that on September 12th, 1918, she paid to Lipscomb \$50.00 rent for said month of September. If Lipscomb is her landlord why did she not pay him the rent thereafter? She had ample time before action was brought in the Municipal Court to ascertain from Lipscomb his interest, if any, in the property, and had he been her landlord judgment would never have been given against the appellant in said court. (R. 2.) She says in her affidavit (R. 4, 5), appellee desired to get possession of said premises so that she could get more rent than appellant was paying, all of which indicates appellant either knew or had the means at hand to know who the real owner of the property is and who was the landlord.

This case is not analogous to the case of Willis vs. Eastern Trust and Banking Company (cited by appellant), the latter being a case wherein a mortgagee attempted by landlord and tenant proceedings to oust a mortgagor.

The receipt of rent by the landlord for the current month pending a notice to quit does not amount to a waiver of his right to demand possession under that notice. Byrne vs. Morrison, 25 D. C. Appeals, 72.

The other allegations contained in appellant's affidavit (R. 4, 5), excepting the one in which she says she is a Government employee and has a dependent mother, are at best her opinions, based on hearsay evidence, and are so vague as to be apparently without merit; and that excepted allegation is immaterial for the reason that *appellee's* necessity for the use and occupation of said premises as a home for herself and father is the matter in controversy.

Public Resolution 31—65th Congress—Joint Resolution to Prevent Rent Profiteering in the District of Columbia, approved May 31st, 1918, and sometimes known as the "Saulsbury Resolution," among other things, provides as follows: "Resolved * * * That until a treaty of peace shall have been definitely concluded between the United States and the Imperial German Government, unless in the meantime otherwise provided by Congress, no judicial order, decree, or judgment for the recovery of possession of any real estate in the District of Columbia, now or hereafter held or acquired by oral or written agreement of lease for one month or any longer period, or for the ejectment or dispossession of a tenant therefrom, shall be made * * * unless * * * the premises are necessarily required by the landlord or bona fide purchaser for occupation either by himself or his wife, children, or dependents while he is in the employ of or officially connected with any branch of the Government * * *." It is respectfully submitted that appellee clearly comes within the meaning of the Act above quoted and that no affidavit which appellant could furnish should deprive appellee further from her rights in the premises, unless such affidavit clearly demonstrates someone other than appellee to be the owner of said premises.

Law Rules 19 and 73 of the Supreme Court of the District of Columbia are analogous and have been repeatedly sustained. The purpose of the latter rule is to preserve the court from frivolous defenses and would

defeat attempts to use formal pleadings as means to delay the recovery of just demands. Both rules are "most equitable in application"; the constitutional right of trial by jury is denied by neither. *Fidelity and Deposit Company of Maryland vs. Smoot*, 187 U. S., 315, et seq.; *Columbia Laundry Company vs. Ellis*, 36 D. C. Appeals, 583. This Court in the *Columbia Laundry* case said: "While affidavits of defense are to be liberally construed in favor of defendant's right to a trial upon its merits, no defendant should be permitted to avoid the rule by the interposition of indirect and vague statements when it is apparently within his power to comply with the spirit of the rule." The Court referring to the cases of *Brown vs. Ohio National Bank*, 18 D. C. Appeals, 598, and *Chapman vs. Natalie Anthracite Coal Company*, 11 D. C. Appeals, 386.

Appellee, the owner of record of said premises, in the absence of the so-called *Saulsbury Resolution*, would be entitled to possession of her premises, especially after the expiration of the term of the lease, and under that resolution she is clearly by necessity entitled thereto by reason that she is the owner of said premises, is now and has been for several years past a Federal employee in this District, is a widow, has her father—aged and infirm and an inmate of a charitable institution—dependent, and she requires said premises as a home for herself and her father that they may live together during his declining years.

Respectfully submitted,

THOMAS M. BAKER,
Attorney for Appellee.